

FILED

MAY 28 2019

Clerk, U S District Court
District Of Montana
Billings

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DAVID WAYNE WESTOVER,

Defendant.

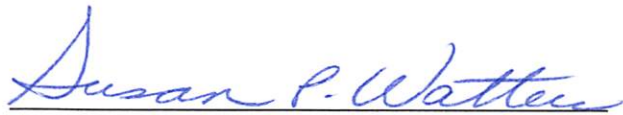
CR 18-108-BLG-SPW-1

ORDER

Before the Court is the Defendant's motion to dismiss the indictment on double jeopardy grounds. The Defendant argues his federal prosecution for methamphetamine distribution is barred by double jeopardy because he was charged and convicted of methamphetamine distribution in North Dakota state court based on the same conduct.

The Defendant acknowledges his argument is foreclosed by *United States v. Wheeler*, 435 U.S. 313 (1978). The Court is bound by Supreme Court precedent and has no choice but to follow it. *Hart v. Massanari*, 266 F.3d 1155, 1175 (9th Cir. 2011). The Defendant's motion to dismiss (Doc. 80) is denied.

DATED this 28th day of May, 2019.



SUSAN P. WATTERS
U.S. DISTRICT JUDGE